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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Performance Measurements and)
Reporting Requirements)
for Operations Support Systems,)
Interconnection, and Operator Services)
and Directory Assistance)

CC Docket No. 98-56
RM-9101

REPLY COMMENTS OF
KMC TELECOM INC.

KMC Telecom Inc. ("KMC"), by undersigned counsel, hereby submits its Reply Comments for filing in the above-referenced proceeding. KMC objects to the erroneous suggestions made by several incumbent local exchange carriers ("ILECs") that: (i) the Commission has no role in establishing performance measurements for operations support systems ("OSS"); and (ii) adequately disaggregated measurements and reports will place an undue burden on ILECs. As explained in more detail below, KMC believes that the model rules proposed by the Commission represent an important first step toward enforcing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"). Indeed, the model rules are more than generous to ILECs when one considers that providing nondiscriminatory access to OSS is a federal statutory mandate and the fact that the Commission directed ILECs to implement nondiscriminatory access by a date that has long since passed.

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Reply Comments of KMC Telecom Inc.
CC Docket No. 98-56, RM-9101
July 6, 1998

ORIGINAL

I. THE COMMISSION HAS BOTH JURISDICTION OVER, AND A ROLE IN IMPLEMENTING, PERFORMANCE MEASUREMENTS AND STANDARDS

Ameritech stated in its Comments that the Commission has "neither jurisdiction nor a role in developing performance measurements for local interconnection agreements."^{1/} Several other ILECs similarly asserted that "the Commission has no authority to set national performance standards for the delivery of local telecommunications services"^{2/} or that "the *NPRM* fails to accord private parties and contractual negotiations the deference accorded them by the Telecommunications Act of 1996 and articulated judicial precedent."^{3/} These ILECs therefore would have the Commission stop dead in its tracks, reverse direction, and leave the question of ILECs' OSS performance entirely to state administration and negotiated obligations.

The position of Ameritech, BellSouth, and U S WEST is contrary to both the record of this proceeding and federal law. As a preliminary matter, the vast majority of commenters – including Bell Atlantic and GTE – welcome the Commission's proposed action in this area as beneficial for both carriers and the states.^{4/} Moreover, as GST, ALTS, and others noted in initial Comments, federal law provides this Commission with clear jurisdiction to assert authority over the manner in

^{1/} Ameritech at 7.

^{2/} BellSouth at 2.

^{3/} U S WEST at 3.

^{4/} See, e.g., GTE at 2, Bell Atlantic at 4; ALTS at 2; WorldCom at 3; GST at 2-3. Of course, as explained below, GTE and Bell Atlantic differ with these other parties on whether the Commission should go beyond its current proposal to adopt *binding* performance standards in lieu of model rules.

which access to OSS is provided.^{5/} Specifically, under section 251(d)(1), the Commission is directed to take "all actions necessary to establish regulations to implement the requirements of this section."^{6/} This provision allows the Commission to act as it deems necessary to implement sections 251(c)(3) and (c)(4) of the Act to mandate nondiscriminatory access to ILECs' OSS functions. Indeed, the *Iowa Utilities Board* decision issued by the U.S. Court of Appeals for the Eighth Circuit confirms that the Commission retains authority to define OSS as a network element.^{7/}

Commission action is warranted in this instance. As the Commission recognized in its Notice of Proposed Rulemaking ("*Notice*"), ILEC performance must be gauged for "timeliness, quality, and accuracy."^{8/} While U S WEST would have the Commission defer to "contractual negotiations,"^{9/} the Commission should recognize that these contracts are formed against the backdrop of a carefully designed statutory and regulatory environment. If the Commission fails to act, the statutory requirement that ILECs provide access to OSS on a nondiscriminatory basis will continue to be a vague contractual promise, rather than the enforceable duty it should be under federal law.^{10/} The Commission correctly concluded that its goal in developing performance

^{5/} See, e.g., GST at 2-5; ALTS at 2; AT&T at 8-13; CompTel at 10-13; LCI at 7-8.

^{6/} 47 U.S.C. § 251(d)(1) (1996).

^{7/} *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753, 808-809 (8th Cir. 1997), *cert granted*, *AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998).

^{8/} *Notice* at ¶ 32.

^{9/} U S WEST at 5-9.

^{10/} Furthermore, it would undermine the very purpose of measuring ILEC performance if the establishment of performance standards and reporting requirements is left to individual CLEC-

measurements is "to isolate the activities in which an incumbent could discriminate when providing services and facilities to competing carriers."^{11/} Without detailed performance measurements, competitive local exchange carriers ("CLECs") will encounter significant difficulty in attempting to identify discrimination that occurs in the provision of access to ILECs' OSS functions.

II. THE COMMISSION SHOULD ENSURE THAT ITS MODEL RULES PROVIDE A MEANINGFUL OPPORTUNITY TO MEASURE ILEC PERFORMANCE

The Commission's *Notice* struck an appropriate balance between proposing reports that will accurately measure ILEC performance without unduly burdening ILECs. In fact, as KMC argued in its initial comments, there are several instances in which the Commission should go further in measuring ILEC performance.^{12/} Parties such as AT&T, Allegiance, and WorldCom generally supported this conclusion by suggesting various other measurements that might merit enhancement in order to discern more effectively when discrimination occurs.^{13/} Because the ultimate goal in this

ILEC negotiations. If standards and reporting requirements are not uniform throughout an ILEC's region (or at least throughout each state), chaos will ensue. Different CLECs may not be able to secure the same promises with respect to performance standards and reporting requirements, eviscerating any thought that these standards and reports would be useful in detecting discrimination between carriers. A single set of performance benchmarks and reporting requirements will reduce – not generate – litigation and uncertainty, and better serve the purpose of establishing such measurements in the first instance.

^{11/} *Notice* at ¶ 36.

^{12/} *See* KMC/RCN at 5-12 (recommending that the Commission require greater disaggregation in reporting on the categories of network element and trunk provisioning, held orders, and notice intervals).

^{13/} *See, e.g.,* AT&T at 26 (suggesting that ILEC performance with respect to business POTS should be measured separately from performance in the context of other, dissimilar business services); Allegiance at 14 (recommending that unbundled loops be broken down into four categories); WorldCom at 14 (requesting trunks be measured separately from transport links).

proceeding is to prevent discrimination proscribed by the Act, the Commission should approve the kind of disaggregated performance measurements that will allow CLECs to detect subtle forms of discrimination that might go unnoticed if, for example, all kinds of loops were lumped together in a single measurement.

The Commission should not be swayed by ILEC comments that its proposals are "non-binding micro-management"^{14/} and "'tedious' with detail"^{15/} or by claims that the burden imposed upon ILECs by these proposals may outweigh the benefits of detecting subtle forms of discrimination.^{16/} As GST noted in its Comments, the Commission initially ruled that ILECs would be required to provide full nondiscriminatory access to OSS functions – meaning electronic access – no later than January 1, 1997 and "[y]et here the Commission and the industry are, exactly seventeen months later, still trying to arrive at a means of ensuring nondiscriminatory access."^{17/} To ask ILECs finally to provide some verification of their compliance with a statutory and regulatory mandate that is now more than eighteen months old can hardly be considered unduly burdensome. The Commission therefore should feel free to implement whatever measures it feels are reasonably

^{14/} Ameritech at 11.

^{15/} U S WEST at 17.

^{16/} See, e.g., BellSouth at 9 (claiming that this proceeding is based solely on "anecdotal evidence"); U S WEST at 24 (stating that "to the extent that the Commission's proposals require the collection of data or measurement of things U S WEST does not currently measure, there will clearly be a cost burden").

^{17/} GST at 7.

necessary to ensure that ILECs are providing nondiscriminatory access to OSS functions in accordance with the Act.

Moreover, the Commission should not back away from its proposals: (1) to require ILECs to provide requesting CLECs with reports that contain data for the individual CLEC as well as aggregate CLEC data; and (2) to establish a central "clearinghouse" from which CLECs and state commissions may obtain reports as needed. While Ameritech claims that establishing a clearinghouse would entail "unnecessary expense,"^{18/} doing so would reduce any perceived burden upon ILECs, since CLECs and state commissions could always turn to the clearinghouse for data in lieu of attempting to obtain information from individual ILECs.^{19/} However, should the Commission accept ILECs' arguments that the proposed measurements and reports are overly burdensome, KMC would suggest that the Commission consider reducing the frequency of the reports (from monthly to quarterly) rather than destroying the granularity of the reports. Indeed, many smaller CLECs may be able to make better use of quarterly reports than they can of monthly reports. If the Commission pursues such an approach, KMC believes that the Commission also should adopt many, if not all, of the CLEC recommendations to ensure that while less frequent, the measurements are more detailed and the reports are more useful.

^{18/} Ameritech at 84.

^{19/} Moreover, for those CLECs that are not yet offering service in a particular ILEC's region, the clearinghouse could prove to be both an essential and cost-effective method of obtaining aggregated CLEC data (combining all the data for all CLECs in the ILEC's region). Specifically, such information undoubtedly would prove useful in determining whether it makes good business sense for CLECs to enter an ILEC's region in the first instance. Thus, the Commission also should allow the clearinghouse to be used as a resource for CLECs who have not yet entered a region but are contemplating doing so.

Finally, KMC concurs with the commenters who asserted that the Commission has the authority and the justification to impose enforceable performance standards or technical OSS standards in the context of this proceeding.^{20/} As noted above, the Commission's jurisdiction to promulgate rules in this area, which the Eighth Circuit upheld, is clearly set forth in sections 251(c)(3) and (4) together with section 251(d)(1). Although the Commission may believe that it needs more time to monitor performance prior to establishing binding standards – and more time for the industry to discuss technical standards – the Commission should not feel that it is in any manner precluded from acting to adopt either performance standards or technical standards. KMC therefore concurs with GST's position that if the Commission should decline to adopt such standards at this time, it should establish a date certain by which it will revisit both of these issues.^{21/} In fact, KMC urges the Commission to go further than GST's initial proposal and declare that it *does in fact have jurisdiction* to implement performance and technical standards, but that it is merely *deferring* any decision to adopt such standards until a later date. Such a declaration would allow the Commission to fight the jurisdictional battle with ILECs now, so that later it can focus upon the substantive question of appropriate standards when their time arrives.

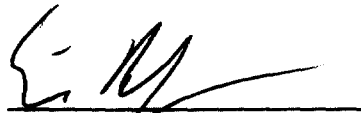
^{20/} See, e.g., LCI at 4-9, 12 (supporting binding performance standards and enforcement measures); ALTS at 23-24 (recommending the Commission establish a rule requiring ILECs to commit to commercial enforcement mechanisms); GST at 5 (urging the adoption of binding performance standards and technical standards); AT&T at 8-17 (claiming the Commission has jurisdiction to implement binding rules, and asserting there is a compelling need for such rules); CompTel at 15-16 (recommending the adoption of penalties for failure to comply with the Commission's OSS rules).

^{21/} GST at 5. See also GSA at 13-14 (proposing that the Commission make its performance measurements and reporting requirements mandatory after one year).

III. CONCLUSION

Without Commission action in this area, neither CLECs nor state commissions will ever have a clear picture of whether the ILECs are providing CLECs nondiscriminatory access to OSS functions. Although ILECs would steer the Commission away designing any sort of OSS performance measurements and instead have it defer to "contractual negotiations," such a course of action would only preserve the status quo in which CLECs cannot compete on a level playing field because of processing and provisioning roadblocks imposed by ILECs. The adoption of detailed performance measurements and reporting requirements will provide this Commission and state commissions at last with the information necessary to enforce the Act and provide CLECs with a meaningful opportunity to compete with ILECs on the merits of their service offerings.

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Dated: July 6, 1998

CERTIFICATE OF SERVICE

I, Jolanda Tedford, do hereby certify that the foregoing Reply Comments of KMC Telecom Inc., were served on the following this 6th day of July, 1998, via hand delivery (*) or first-class U.S. mail, postage prepaid:

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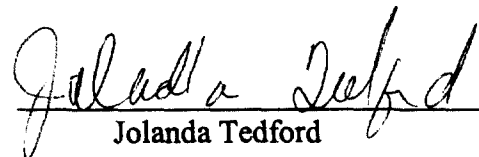
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